anuário antropológico
v. 47 • nº 3 • setembro-dezembro • 2022.3

# Ethical-Moral Rights and Conflict Management

DOI: https://doi.org/10.4000/aa.10142

**Luís Roberto Cardoso de Oliveira**
Universidade de Brasília – Brasil

ORCID: 0000-0002-2152-0991
LRCO.3000@GMAIL.COM

Full Professor at the Department of Anthropology at the Universidade de Brasília, PhD in Anthropology at Harvard University (1989), and CNPq productivity scholarship level 1A. He was president of the Associação Brasileira de Antropologia (2006-2008) and vice-coordinator of InEAC-INCT (2009-2022). He carried out research in Brazil, the United States, Canada/Quebec and France, with an emphasis on the following topics: rights, citizenship, democracy, politics of recognition and conflict management.



The text discusses the place of ethical-moral rights in processes of conflict management and in demands for citizenship rights from a comparative perspective. Drawing on cases brought to small claims courts in the US, demands for recognition in Quebec, and patterns of inequality of treatment in Brazil, the text reflects upon the importance of these rights and the respective difficulties to redress them adequately.

*Dispute resolution; Citizenship rights; Inequality; Social bond; Fairness.*

O texto discute o lugar dos direitos ético-morais em processos de administração de conflitos e em demandas por direitos de cidadania em perspectiva comparada. Tendo como referência casos acionados em juizado de pequenas causas nos EUA, demandas de reconhecimento no Quebec, e padrões de desigualdade de tratamento no Brasil, o texto reflete sobre a importância dos direitos ético-morais, e respectivas dificuldades para viabilizar a reparação satisfatória destes direitos.

*Disputas judiciais; Direitos de cidadania; Desigualdade; Elo social; Equidade.*

In 1986, three years after the appearance of the original version of *Moral Consciousness and Communicative Action* (1989 [1983]), Habermas published an important text seeking to answer the question concerning the extent to which Hegel's objections to the notion of morality in Kant might apply to discursive ethics (Habermas 1986, 16-37). Put succinctly, the question was whether the radical separation between norms and values insisted on by Kant eliminated the possibility of comprehending concrete ethical lives, where norms and values always appear in articulated form. Habermas argues that discursive ethics aims to recuperate the importance of this articulation contained in the Hegelian notion of ethical life (*Sittlichkeit*), but does so by Kantian means, giving precedence to the normative dimension, and, therefore, not renouncing the strong claims to validity in this area. As I have already indicated elsewhere, Habermas's formulation, in my view, remains at a level too abstract to enable an adequate comprehension of the demands for legitimacy and fairness made by the parties in empirically-given conflict management processes (Cardoso de Oliveira 2019 [1996]).

In a way, the focus on comprehending demands for reparation of ethical-moral rights in my research activity has been an attempt to contemplate the Hegelian critique, based on the perspective outline in discursive ethics. But rather than privileging the meaning of norms, I have given precedence, on one hand, to the analysis of the claims of fairness of legal agreements or decisions in conflict management processes (Cardoso de Oliveira 1989, 2019 [1996]). On the other hand, I have also emphasized the importance of the fairness of the relation and the quality of the social bond between the parties in these same processes or in demands for rights associated with the idea of citizen equality, based on a dialogue with the contributions of Mauss and Maussians, united in MAUSS[1]. Thus, my endeavours align with the idea of a critical sociology or anthropology (Cardoso de Oliveira 2018a, 39-52, 216) with a focus on ethnographic research and which closely shares various concerns with the critique of critique proposed by Boltanski and Thévenot in *On Justification*, recently translated into Portuguese (2020 [1991]). As will become clearer later, ethical-moral rights are singularized by their articulation of conceptions of normative rightness with expectations of dignified treatment.

In what follows, (I) I begin by presenting the importance of the articulation between rights, values and social bond for comprehending the place of ethical-moral rights at the conceptual level. I then discuss how this articulation enables a better apprehension of ethical-moral rights in specific ethnographic situations, (II) beginning with an exposition of the impact of these rights on conflict management in small claims courts in the United States. I also explore (III) how the demands for recognition in Quebec help in the understanding of important aspects of these rights, before turning (IV) to focus on the patterns of inequality in treatment in Brazil in light of the significance of ethical-moral rights for citizenship. Finally, (V) I conclude the text with a general observation on the presence of a moral insult in the disregard shown for these rights in three ethnographic situations, and highlight an aspect of Brazil's singularity in this context[2].



1 *Mouvement anti-utilitarisme dans les sciences sociales*, created under the leadership of Alain Caillé at the start of the 1980s, with *La revue du M.A.U.S.S.* functioning as the main channel for divulgation of the movement's output.

2 Although I do not refer here to the ethnographic material collected in research begun in France in 2006, this has been important as a counterpoint to the discussion on citizenship in Brazil, the United States and Canada/Quebec, especially with regard to the importance of dignity for the articulation between rights and status in shaping the idea of citizen equality (Cardoso de Oliveira 2006, 2011b, 2018b).

## I) Rights, Values and Social Bond

When we analyse processes of interpersonal conflict management or demands for recognition – which today are always focused on recovering citizen equality – it becomes clear that their comprehension requires the articulation of rights, values and views concerning the quality of the relationship in the interaction between the parties, which should observe the idea of dignified treatment, in accordance with local civic sensibilities (Cardoso de Oliveira 2018b). I believe that this articulation is clearly expressed in the demands of meaning (or sense) that are constitutive of these processes from the viewpoint of the actors, whose actions are always guided by the question of what is adequate, correct or just. This approach emphasizes both the importance of the notion of ethical life and also the need to adequately contextualize the event within the universe of meanings that give life and support to the quality of the ethnographically-given social interactions. Proceeding in this way, it seems possible to re-examine Habermas's proposal to confront the Hegelian challenge through a Kantian approach in a more concrete and deeper form on the sociological plane.

Here the precedence of the normative dimension is expressed in the combination of the claims of validity of the rights mobilized, taking the context in question as the reference point, with the analysis of the quality of the interaction between the parties over the unfolding of the action, equated through the logic of the gift and its three obligations: to give, to receive and to reciprocate (Mauss 2003 [1924]). In the exchange relations described by Mauss in *Essai sur le don*, acts of exchange imply not only the recognition of the rights of the parties but also the dignity or worth (value) of the partners, which enables them to participate in reciprocal relations (Cardoso de Oliveira 1996a, 152-4). The recent proposal by Caillé (2019) to add a fourth obligation, to demand, thus extending the domain of the gift, also helps articulate the importance of the quality of the relationship between the parties in conflict management.

The main characteristic of ethical-moral rights is the fact that they cannot be fully embodied into formal law. Furthermore, when violated or infringed, the respective acts of violation cannot be adequately translated into material evidence and involve the deprecation or negation of the interlocutor's identity (Cardoso de Oliveira 2008, 136). In the case of legal disputes, there is a difficulty in incorporating the demands for reparation of these rights in the respective disputes, due to the filtering process involved in the reception of the demands, aptly expressed in the process of *narrowing down* the cases, which excludes aspects of the conflict that cannot be neatly dovetailed into predefined legal categories. Along these lines, the significance of the distance between the legal framework and the sociological-anthropological perception of the conflicts has been examined by various researchers like Kant de Lima (2008, 2010) and Simião (2014, 2015) in Brazil, as well as in the works of Thévenot (2019) or Champeil-Desplats, Porta and Thévenot (2019) abroad, to cite just some examples.

While the difficulty of giving formal legal shape to ethical-moral rights is

marked by the demand for expressions of appreciation and considerateness that have no legal basis for their constitution as legally binding obligations, they also require a dimension of dialogical connection and shared understanding between the parties. This, in turn, depends on mutual acceptance of substantive grounds for the aforementioned expressions of appreciation and considerateness. In the former case, there is no way to substantiate the legal obligation of one party (person or collective) to attribute a positive value or quality to the ways of life, practices or worldviews of the other party involved in the interaction. In the latter case, the expressions of appreciation and considerateness must convincingly reflect the value effectively and genuinely attributed to the demanding party by the party responding to the demand for recognition. In other words, recognition of the value in question cannot be motivated solely by legal obligations.

Still at a general level, just like the gift analysed by Mauss, the observation of these rights is simultaneously free, spontaneous, and obligatory. Put otherwise, the demand for these rights is only adequately considered when the demanding party is convinced that the refusal of the interlocutor is a real possibility and that the effective observation of the rights in question only occurs when the party receiving the demand convincingly manifests acceptance of the demand's merit and identifies the moral substance of dignity in the demanding party (Cardoso de Oliveira 2011a [2002], *passim*). Likewise, turning to Caillé's observation[3] that the gift has an intrinsic and an extrinsic dimension, as well as more clearly formulating the character of the obligation in question, I argued that:

> With regard to the intrinsic dimension of worth or merit that demands to be recognised, I wish to propose the idea that this demand has at least two characteristics: 1) it requires the interlocutor's willingness to comprehend and learn to appreciate the singularity of the group making the demand, in situations where the refusal to do so is taken as a manifestation of contempt and, therefore, as an insult; 2) although the worth or merit demanded here is not conceived as something measurable, and subject to external evaluation, it is lived as something demonstrable to third parties, at least to those willing to establish relations of mutual respect and attention, the only modality of interaction considered legitimate in these circumstances (Cardoso de Oliveira 2018a, 217).

This formulation is somewhat different to the view of Honneth, who associates social esteem (solidarity) – as one of his three spheres of recognition (love or affection and respect comprising the other two) – with the social evaluation of the achievements or performance (*Leistung*, in the original) of ego (Honneth 2003, 237-67). Consequently, Honneth's formulation completely bypasses the intrinsic dimension of the recognition of the merit or worth of the group making the demand, which also distances him from the formulations of Taylor (1994, 25-73) in his analysis of the importance of the recognition of worthiness in the case of Quebec. As Taylor argues, genuine recognition, rooted in the substantive demonstration of an

3 An observation made during the colloquium organised in December 2006 by A. Caillé and C. Lazzeri, and which resulted in publication of the collection *La quête de reconnaissance* under Caillé's direction (2007).



Anu. Antropol. (Brasília) v. 47, n. 3, pp.30-47. (setembro-dezembro/2022). Universidade de Brasília. ISSN 2357-738X. https://doi.org/10.4000/aa.10142

appreciation of the other's qualities, demands a fusion of horizons and, therefore, a dimension of transformation of the actor's original view (*ibid.*, 70).

Obviously, it should not be supposed that demands for recognition or observation of ethical-moral rights, when well-founded, will also prove successful in the respective political or judicial processes. However, the alternative to a satisfactory definition of the demand would be to negotiate an acceptable compromise or accord, which redefines the terms of interaction between the parties with the aim of enabling future coexistence without aggravating the conflict. Furthermore, we should not forget that, when poorly managed, conflicts motivated by violations of ethical-moral rights can move to the criminal courts, as in the case involving Anselmo, Natalício and Denílson in a court in Gama (DF), described by Gomes de Oliveira (2005, 90) and re-examined in my article on the relationship between violence and moral aggression (Cardoso de Oliveira 2008, 140-1).

## II) Demands for Reparation for Insults in Small Claims

Research on small claims in the United States (Cardoso de Oliveira 1989) first drew my attention, and in particularly incisive form, to the importance of ethical-moral rights. Infringement of these rights was experienced by the parties as a moral insult, provoking anger against the aggressor, even though the injured parties found it difficult to formulate their demand for reparation as a right, and the latter was made completely invisible during the court hearing. On one hand, the Small Claims Courts in the United States deal only with civil lawsuits and all claims must demand financial compensation either for breach of contract (e.g., a buyer-seller relation) or for a tort (e.g., a vase falls from a windowsill onto a car hood and incurs a financial loss for the vehicle's owner). In both cases, the plaintiff must present documentary proof, factually demonstrating the extent of the damage and the defendant's responsibility for the occurrence.



When compensation for insult was part of the demand, it was difficult to prove as a material loss that could provide grounds for compensation in accordance with the existing criteria for presenting evidence, and was systematically excluded from the judge's purview. On the other hand, claims demanding compensation for a sum of less than US$ 50 would make little sense were we to presume that the primary motivation for filing the claim was to obtain the compensation demanded. Since the minimum cost for the processing of a small claim to its judicial outcome was around US$ 50, in the claims worth up to this sum, a successful plaintiff would at most obtain reimbursement of the costs incurred in pursuing the claim (Cardoso de Oliveira 2011a [2002], 49-68)[4]. This was a strong signal, therefore, that the reparation being claimed went beyond the compensation demanded in the trial, even if the court was unable to narrow it down to an acceptable legal claim and the plaintiff was unable to formulate it adequately.

Frequently, the perception of insult was caused by the identification of improper treatment in episodes occurring during the interaction of the parties from the beginning of the conflict, in which at least one of the parties attributed acts of

4 Combining fees, the cost of transportation for trips to the court, postage, and unpaid work hours.

inconsiderateness or disrespect to the other. Although the revolt provoked by the experience of being insulted was clearer in claims for under US$ 50, when they constituted the core of the dispute, as in the case of 'The Suspicious Refrigerator' in which the plaintiffs demanded compensation of US$ 40 (case no. 10, in Cardoso de Oliveira 1989, 425-37)[5], the demands for reparation for insult also appeared in many other cases as an important aspect of the conflict. Thus, in the case of the 'Lost Shirts' (case no. 7, *ibid.*, 383-98), the plaintiff sued the laundry that lost his shirts for a substantial sum by consensus higher than the market price of the products (old shirts evaluated as though new) because the laundry owner attempted to avoid responsibility with lame excuses, which left the plaintiff of the claim feeling offended.

Similarly, in the case of 'The Inconsiderate Health Service' (case no. 3, *ibid.*, 304-308), the plaintiff demanded US$ 750 for "pain and suffering", as well as the reimbursement of her medical bills at another clinic (US$ 450), due to the difficulties that the Health Service had caused her, and the lack of responsibility and lack of respect or consideration shown by failing to take seriously her allegations that the first treatment was not working and that she continued to feel the same pain[6]. The perception or feeling of inconsiderateness also constituted an important aspect in the case of the 'Disappointing Auto Transaction' (case no 5, *ibid.*, 321-7) in which the plaintiff demanded compensation of US$ 500 for the expenses incurred on buying and repairing the vehicle. As well as not appearing to be in the condition advertised, the main motivation for litigation had been the feeling of having been conned. In all these cases, the lack of attention or overt considerateness shown to the interlocutor was experienced as a denial of the worth of the injured party and as an attempt by one of the parties to place the other party in an inferior condition, unacceptable at the level of citizenship (Cardoso de Oliveira 2018b, 37).

However, I wish to briefly mention now the case of 'The Unsatisfactory Stone Wall' (case no. 6, *ibid.*, 327-39), which indicates the potential occurrence of demands for compensation for infringement of ethical-moral rights in almost every type of interpersonal conflict, even when the formalization of the process for the breach of a legal right, provided by law, is easily narrowed down by the judge. Cases like these led me to determine 'recognition' as one of the three thematic dimensions constitutive of legal conflicts, along with 'rights' and 'interests' (Cardoso de Oliveira 2004, 122-35; 2008, 135-46). The case involved a contract in which the plaintiff had been hired to build an interior stone wall in the defendant's house. The work was agreed to be implemented in three stages with payments at the end of each. When the second stage had been completed, the defendant did not approve the work and refused to pay for this stage, unilaterally terminating the contractual relation through a letter. The plaintiff immediately filed a claim at the small claims court on receiving the letter, which prompted the formalization of a counterclaim on the part of the defendant. The case judge quickly reviewed and defined the legal parameters of the dispute, which were explicitly accepted by the parties, whose disagreement was limited to the best way of interpreting them in the dispute in question. The judge presiding over the hearing was exceptionally

5 The court offered the possibility for claims to be negotiated in mediation sessions, for those parties that wished to do so, and cases no. 10 and 7 cited in this paragraph were processed in this way. Cases no. 3, 5 and 6, on the other hand, cited below were decided in a court hearing.

6 This part of the claim was immediately rejected by the judge since the court did not consider demands that required expert evaluation (to substantiate the extent of the pain and suffering and its relation to the conflict), but here I wish to draw attention to the motive of the plaintiff, who felt outraged by the treatment shown to her by the Health Service.



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clear and explicit concerning the reasons behind his decision in favour of the plaintiff on the main claim – US$ 600 for the construction of the second stage of the wall – although he accepted part of the counterclaim of the defendant, to the value of US$ 100, reimbursing him for part of the equipment purchased for the work, which had disappeared. The defendant signed a cheque for US$ 500 for the plaintiff at the end of the hearing, closing the case.

Although there had been a consensus on the legal parameters of the claim, and an understanding of the judge's arguments, the hearing provided no opportunity for discussion of the allegations of bad faith and improper behaviour between the parties after the breach of the contractual relation. In fact, these allegations had a secondary importance for the parties, despite the vehemence with which they were articulated during the hearing, demonstrating a clear mutual dissatisfaction with the attitudes of the other, and the impossibility of seeing them clarified or sanctioned by the court left a deficit in the respective claims for reparation. As indicated above, I have situated this type of demand within the context of the thematic dimension of recognition, associated with the expectation of the parties to be treated with respect and considerateness by their interlocutors as bearers of the moral substance of dignity. In western democracies, this is expressed in the individual's worthiness to enjoy citizen equality, which, in this case, was being demanded by both parties. In societies with a state judicial system, courts are usually well-equipped to assess claims for reparation with respect to the thematic dimensions of rights and interests (relating to the infringement of legal rights and to the damage arising from this infringement) but have difficulties dealing with the thematic dimension of recognition.



Nonetheless, the thematic dimension of recognition is absolutely central to the observation of ethical-moral rights. One of the reasons why the infringement of these rights is difficult to translate into material evidence, as indicated above, is due to the fact that the infringements concerned are expressed more clearly in the attitudes and intentions of the aggressor, without appearing with the same clarity in their behaviour in any strict sense. I arrived at this formulation in dialogue with Strawson's discussion (1974, 5) of the phenomenology of the moral, which aptly characterises resentment as a feeling provoked by this type of aggression (Cardoso de Oliveira 2011a [2002], 114-6). In the example given by Strawson, resentment is provoked by the pain of someone deliberately treading on your hand, an event very distinct to the physical pain that an accidental step might cause. Strawson (1974, 15) also calls attention to the following: when this aggressive intention or attitude is identified by third parties, the latter experience a feeling of moral indignation, which consolidates the objective nature of the aggression in question.

While ethical-moral rights are an important aspect of many legal disputes, associated with the thematic dimension of recognition, they also have a significant impact on the demands for recognition expressed by social movements, where they are more apparent and more explicitly formulated, as in the case of ethnic-racial, national and gender minorities, or in the demands for social rights motivated by the perception of unequal treatment at the level of citizenship.

## II) Quebec's Demands of Recognition and the Notion of Citizen Equality

The demands for compensation motivated by the perception of moral insult in small claims in Cambridge, Massachusetts, led me to reflect on the contrast between the emphasis on the respect for the rights of the individual in the United States and the concern with the consideration of the person in Brazil (Cardoso de Oliveira 1996b, 67-81). I suggested that this contrast revealed how the two societies had deficits in citizenship that took opposite directions, provoked, on one hand, by the difficulty of universalizing rights in Brazil and, on the other, by a certain invisibility of rights that demand expression of consideration for the person in the United States (*ibid*.), citing Taylor's discussion (1994) of the "politics of recognition" in Quebec. Just like the consideration of the person in Brazil, the demands for recognition in Quebec highlighted the importance of observing the singular *worth* of the interlocutor in public space, although in Brazil this singularization has frequently possessed a selective and excluding character, collaborating towards the confusion between rights and privileges, while in Quebec the demand for appreciation of a *Québécoise* singularity is perceived as a condition for full and equal inclusion of these actors at the level of citizenship. Consequently, the research subsequently conducted in the province contributed greatly to a better comprehension of ethical-moral rights and a clearer elaboration of the concept of moral insult, as well as to a more comprehensive appreciation of both to the problematic of citizenship and citizen equality (Cardoso de Oliveira 2011a [2002]). In all three cases, the respective demands for reparation involve a better assessment of ethical-moral rights, occupying a prominent place in the conflicts.



The public debate over Quebec's demands took as a background the confrontation of divergences over conceptions of equality, as I came to refer to the theme later, with my gaze now turned to Brazil (Cardoso de Oliveira 2018b, 34-63). In the Canadian context, authors like Charles Taylor referred to this as a clash between two conceptions of liberal democracy, naming them liberalism 1 and liberalism 2 (1994, 25-73). While the first form of liberalism is characterized by a radical emphasis on the idea of uniform rights and on the formal procedures of democracy, the second involves the possibility of relativizing the uniformization of rights in certain cases in order to contemplate specific ideas of the *good life* (projects for society). In the case of Quebec these ideas were expressed in the province's demand to be recognised as a 'distinct society,' with implications for constitutional processes of legal review. These would enable the Charter of Rights and Freedoms, instituted in Canada in 1982, to be qualified whenever the latter threatened the preservation of French language and culture in Quebec. Law no. 101, promulgated in 1977 with the aim of protecting the French language, perceived as a collective right, was at the centre of debates and the concern to limit the application of the Charter of Rights and Freedoms. The argument was that limiting access to English-language schools to children whose parents had attended English-language school in Canada would restrict the individual rights of the other children, thus constituting a violation of the aforementioned Charter[7].

7 The need for companies with more than 50 employees to use French in their operations, as well as the limitation or ban on bilingual or multilingual signs in commerce, in a country constitutionally defined as having two official languages (English and French) were another two polemical aspects of the law (Cardoso de Oliveira 2011a [2002]: 96).

Hence, the demand for strictly uniform treatment in the application of these rights was experienced in the province as a denial of the dignity of the *québécoise* identity and, therefore, as a denial of rights, providing a fresh contrast with Brazil, this time from an inverse angle to the contrast drawn with the United States. In the Brazilian case, the difficulty of implementing uniform treatment in the access to rights, differentiating or unequalling rights according to the person's condition and social status, denies citizen equality to large sections of the population, perceived as non-bearers of the moral substance of dignity (Cardoso de Oliveira 2011a [2002], *passim*).

According to Taylor, "[a] society with strong collective goals can be liberal" so long as it respects the diverse viewpoints of its minorities and can guarantee access to fundamental rights to everyone (1994, 59). This type of society would be an example of what Taylor characterizes as liberalism 2, accepting the precedence of the value of the survival of the French culture (and language) in Quebec, an attitude unacceptable under the terms of liberalism 1[8], reflecting the conception of democracy dominant in the rest of Canada. Although Taylor discusses the reasonableness of the right to cultural survival of minorities beyond the case of Quebec[9], it is also true that, in this case, we are dealing with a particularly accentuated value that is repeatedly articulated in native discourse with strong connections to the history of the relationship between Francophones and Anglophones in Canada (Cardoso de Oliveira 2011a [2002]). I cannot discuss this historical process in detail here, but I wish to draw attention to two points that help us understand Quebec's demand: (1) between 1840 and 1867, Canada lived under the regime of the Act of Union, which implemented explicit assimilation policies, removing cultural rights from Quebec obtained from the English Crown at the end of the eighteenth century (Quebec Act of 1774) designed to maintain the French language, the Catholic religion and the French civil code as institutions officially recognised in the province; and (2) the recurrent cultivation of the memory of this period, experienced as a time of repression and suffering, in tradition and in the phrase *Je me souviens* ("I remember"), emblazoned on the number plates of all the province's vehicles.

The phrase makes reference to this suffering but also to the glories of Quebec and its uniqueness. It comprises a fight against the negation of its identity and, simultaneously, for the affirmation of its way of being, even though it was only from the 1960s and the Quiet Revolution that this affirmation began to be voiced explicitly. Although the struggle for the survival of the French language (and culture) was an important element in the demand for Quebec's recognition, it does not seem to me the best path to take in founding this demand as an ethical-moral right. In my view, the objective of survival as a value is subordinate to a more comprehensive articulation of rights and values at the level of citizenship. Here I refer to the relationship between rights and status in the establishment of citizen equality in modern society, post-*Ancien Régime*, which ends with the division of society in estates (e.g., clergy, nobility, peasants). The French Revolution is perhaps the principal landmark of this transformation, which creates an equality of rights and status within the civic world of the respective societies. The status of the

8 Habermas (1994, 107-48) makes an interesting critique of Taylor's proposal of two types of liberalism and the difficulty of substantiating the right to cultural survival of any group or sector, although, in my view, his critique fails to adequately capture the core of the demand for recognition.

9 The right to the guarantee of cultural survival within the sphere of liberalism, with a strong emphasis on the equality of individual rights, is particularly problematic in cases where the group resistant to change demands the right to repress initiatives of its members in this direction, as Kymlicka (1995, 34-78) argues.

citizen replaces the estates, now encompassed by citizenship, constituting a space of interaction and interlocution where equal treatment becomes an imperative on the normative-conceptual plane. Authors like Berger (1983, 172-81) and Taylor (1994, 25-73) describe this process as leading to the transformation of the notion of honour into dignity, emphasizing that while the former term was distributed in a differentiated and unequal way in ancient society, dignity can be equally shared by all citizens.

The creation of a universe of interaction in which all actors have the same rights and status is well described by Marshall for the English case (Marshall 1950, 5-8), where the objective of the new status was for every citizen to be able to live as a *gentleman*, a man of honour, sharing the same dignity and thereby creating an indissociable relation between norms and values at the level of citizenship. This implies that the notion of dignity has an unavoidable substantive dimension, whose identification requires an appreciation of worth. It is within this framework that the dialogue with the *Essai sur le don* becomes particularly enlightening, since, like the relations of reciprocity described in Mauss's work, involvement in the practices of citizen interaction articulates a respect for shared rights with an appreciation of the worth or value of the partner of any interaction, expressed in the perception of the moral substance of dignity of the actors (Cardoso de Oliveira 2011a [2002], *passim*). Since the exchanges in the terms of the gift discussed by Mauss are present in every type of society, including non-egalitarian types, the logic that articulates rights, values and dignity also affords a better understanding of the legitimization of situations and contexts in which asymmetric relations prevail in modern society, outside the civic world, where space still exists for the legitimization of privileges (like those exercised by aristocracies under monarchical systems, as in England, for example).



In my view, given the strength of the English language and Anglo-American culture in Canada, combined with the perception of devalorization of the French culture and language in the rest of the country, the legislation protecting the French language in Quebec should be seen not only as an effort to guarantee the cultural survival of the Québécoise population, but also as a condition for safeguarding their dignity in equality of rights and status with their Anglophone fellow citizens. As indicated above, the devalorization of the French legacy in Canada has direct implications for the perception of the citizenship status of French-speakers and has sometimes been overt, for instance during the period when the Act of Union was in force, or when, back in the 1960s, large department stores in the centre of Montreal refused to speak to customers in French, scornfully telling them: *Speak White!*

Along the same lines, the clashes between Quebec and the rest of the country on how to understand and implement the accord that resulted in the 1867 Constitution – enabling the creation of the Dominion of Canada – and its 1982 amendment by the inclusion of the Charter of Rights and Freedoms as part of 'patriation' (the transition of the Canadian Constitution from the British parliament), was read in Quebec as a guarantee of the equality of rights and status through reciprocal

autonomy[10], as well as affirmation of the view that the Anglophones and Francophones had contributed equally to the country's formation. Consequently, the lack of concern in the rest of Canada over the preservation of the French language, which, in the eyes of Quebec, was being treated as just another language spoken by immigrant communities in the country, despite the official bilingualism, was taken as one more sign of minorization (understood as inferiorization). In the rest of Canada, the foreign languages of immigrants are cultivated in the domestic environment but set aside in the world of work where English is treated as the instrumental language, serving everyone equally. In addition to the idea that English was *just* an instrumental language not making sense to Quebeckers (for whom language and culture are indissociable), the possibility of seeing this situation become established in Quebec was absolutely inconceivable. This set of situations and attitudes left the Quebeckers feeling themselves to be in an unacceptable condition of inferiority vis-à-vis their Anglophone compatriots.

Although I cannot elaborate more concerning Quebec's demand here, is true that for a significant portion of the Anglophone world in the rest of Canada, the status of a distinct society claimed by Quebec appears like a demand of privilege, in some ways inverting the perception of inferiorization, even if the arguments on this side of the equation lack the same foundations or the same persuasiveness. Indeed, there are many poorly discussed and misunderstood aspects on both sides[11], and some efforts to elucidate them and reach a compromise at an interpretative level were made after the 1995 Referendum, as in the collection edited by Roger Gibbins and Guy Laforest (1998). In any event, however we look at the conflict, the core of the problem resides in the allocation and better management of the ethical-moral rights of the parties.

10 Taking as a reference point the division of the Canadian territory into two provinces in 1791: Upper Canada (Ontario) and Lower Canada (Quebec), respectively occupied by Anglophones and Francophones.

11 The difficulty of achieving dialogue and understanding between parties is a recurrent theme in the literature on Canada and symbolized in the classic expression coined by Hugh MacLennan of the "two solitudes" (1995 [1945]).



## III) Ethical-Moral Rights and Unequal Treatment in Brazil

Strictly speaking, the importance of ethical-moral rights in conflict management extends beyond the legal sphere or the demands for recognition of diverse minorities. The pattern of unequal treatment prevalent in Brazil's public institutions, as well as in interactions in civil society, is frequently highlighted by researchers and perceived by the subjects themselves affronted in these contexts as acts of disrespect or contempt, understood here as infringements of ethical-moral rights.

As I have sought to argue in various publications (2010, 2011b, 2015, 2018b, 2020), Brazilian society lives a tension between two conceptions of equality, blurring the distinction between rights and privileges, as well as the exercise of citizen equality in the diverse spheres of interaction in civil society and in relation to the State. Alongside the conception that defines equality as uniform treatment, guided by the idea of legal isonomy characteristic of modern western societies, there also exists another conception, aptly represented in a phrase of Rui Barbosa, whereby "... the rule of equality is to treat unequally the unequal to the extent that they are unequal" (Barbosa 1999, 26). In this latter acceptation, the realization

of equality at the level of justice requires an unequal or differentiated allocation of rights according to the citizen's social condition and status[12]. While as we saw above, this conception does not observe the principles of citizen equality, which do not allow any such distinction of status and rights at the level of citizenship, by being mobilized interchangeably with the former, it also provokes uncertainty and arbitrariness.

In the sphere of Brazil's public institutions, this pattern of inequality was initially described in more incisive form in the book by Kant de Lima (1995) on the police in Rio de Janeiro, where the tension cited above is presented as a paradox between the country's egalitarian constitutional principles, on one hand, and a hierarchical legal system, on the other, which enable discretionary police practices, especially abusive for the low-income population, systematically subject to suspicion and police questioning (*ibid.*, 56-63). In terms of ethical-moral rights, this duplicity in the treatment of the police between high-income and low-income sectors of the population indicates that the latter is not composed of full citizens, making them unworthy of the same civic deference shown in relation to the former. Indeed, the important research of Marcus Cardoso on police operations in Rio de Janeiro's favelas not only describes the abusive form in which the police stop and search residents but also calls attention to the revolt of the latter over this type of treatment, very different from the kind they witness being shown to the population of the middle-class districts around them. Although they do not argue for a universalist vision of rights, they allege that they are workers and good people, also worthy of respect and considerateness (Cardoso 2010, 2013).

12 The institution of special prison, guaranteeing access to special accommodation in prison (before the accused's sentencing) for those with higher degrees is perhaps the best example of the unequal legal treatment existing in Brazil's normative structure, dependent on the status and social condition of the accused.



This scenario also reveals shortfalls in the institutionalization of the role of the citizen in Brazil, as Roberto DaMatta (1991, 72) had already signalled. In defining the country as a relational society, DaMatta (1979, 139-93; 1991, 71-102) reflects on the difficulties of institutionalizing the role of the citizen in a universe in which two classificatory logics operate, guiding the action of actors in opposite directions: the individualist logic of equality and impersonalness, taking as a reference the *world of the street*, and the traditional logic of personal and hierarchical relations, taking as a reference the *world of the home*. To what extent is the role of the citizen, focused on the individual with equal rights and status, adequately taught in Brazil's institutions in this context?

DaMatta's formulation of the combination of these two classificatory logics was a source of inspiration for the identification of the paradox emphasized by Kant de Lima in Brazil's institutions of justice, as well as for my diagnosis of the existence of a tension between two conceptions of equality prevailing in the country's public sphere. The three formulations intersect and overlap in many areas and share the view that the relationship between the dichotomous pairs is highly porous, meaning that, in many circumstances, the respective pairs are expressed in articulated (non-polarized) form and do not appear to the actors as mutually-exclusive alternatives. This porosity seems particularly clear to me in the ideas of paradox or tension, complexifying the critique of unequal treatment in the field of citizenship.

The problem here is not limited to the existence of unequal treatment in the sphere of citizenship, where the western tradition preaches that equal treatment is imperative, but also to the lack of clarity about who, where, when and in what circumstances access to differentiated treatment should exist. If we take the civic world as the universe of interactions where equal treatment must assume precedence in western democracies, then Brazil does not have a well-formed civic world with a clear demarcation of the difference between rights and privileges. Although the civic world can manifest in diverse configurations, depending on local civic sensibilities, as I have argued elsewhere (Cardoso de Oliveira 2011b, 2018b), it clearly demarcates the boundaries between the semantic fields of rights and privileges. In democracies where citizenship is a consolidated value, the citizen role is strongly internalized in the process of socialization of the actors. This does not mean that privileges do not exist: they do, but their occurrence is recorded outside the civic world[13].

13 The United States and Canada would be good examples of these democracies, although their respective civic worlds have their own characteristics, and the cases of disrespect of ethical-moral rights discussed above do not involve the blurring of rights and privileges found in Brazil.

If special prison is a clear example of unequal treatment implemented in a systematic form consistent with the legislation, which by itself infringes the idea of citizen equality prevailing in the west, in many other circumstances the reason and merit of unequal treatment remain unclear, as mentioned above in relation to the abusive treatment of favela residents by the police. The legal deliberations in the context of custody hearings are another example, focusing now on highly formalized institutional practices. These hearings evaluate the need to keep in prison defendants arrested at the crime scene and also whether they have suffered torture or mistreatment during the police actions. The majority of such arrests are made in crack downs on the consumption and trafficking of drugs and small robberies or thefts. In addition to the judge (or the prosecutor) rarely taking seriously the accounts of torture and mistreatment (Brandão 2021, 35-52; Wuillaume 2022), the defendants are usually placed in one category or another according to their social status and condition, with black and poor people frequently classified as drug traffickers, subject to higher sentences, who are nearly always remanded to prison. In her master thesis, Wuillaume (2022, 64) describes the case of the release from prison of a young upper-middle class woman – "with a good appearance", according to the magistrate presiding over the hearing – arrested on Ipanema beach during the holiday season in Rio de Janeiro with a "substantial quantity of ecstasy pills and dried cannabis", a situation similar in this aspect to other defendants whose detention was maintained at these hearings. In fact, the judge had no hesitation in declaring that a young woman like her could not possibly be involved with drug trafficking (?!).

Also on the custody hearings, Brandão observes that, in addition to the judges and prosecutors paying scant attention to complaints of mistreatment made by the accused, cases exist where the latter themselves do not complain about the assaults, thinking that "getting smacked in the face", for example, is something to be expected (Brandão 2021, 44). The case brings to light the situation that I have described elsewhere (Cardoso de Oliveira 2020) as an internalization of the condition of civil subjection, when the discursive exclusion imposed on the poorest sec-

tors of the population, characterized as doubly hyposufficient – without financial resources and ignorant of their rights – is accepted as the pattern to be observed. As I pointed out in the same text, this is just one of the possible manifestations in response to discursive exclusion and civil subjection[14].

There are, obviously, many responses contesting this condition of exclusion with subjection, as we saw above in the reaction of the favela residents researched by Cardoso (2010, 2013). The examples are as broad as the universe of the excluded population concerned. One case that deserves highlighting is the revolt of the street vendors working at the Central do Brasil rail station, who understood the repression of the Supervia Guards, but refused to accept the humiliation of the *esculacho* or beating, as the ethnography of Pires (2011) shows us. In the same way, Lemos's ethnography on prisons in the Federal District also demonstrates how inmates respond to this exclusion and subjection, evinced in the arbitrariness of the allocation of their *rights* and *benefits* (2017). The same is seen in the mobilization against the religious intolerance described in the various contributions to the collection organized by Miranda, Mota and Pires (2019), or in the ethnography of Morais Lima (2020) on the *pro bono* work of lawyers from *TamoJuntas* in Bahia, an NGO that represents black women in feminist and anti-racist causes, themselves subject to discrimination and exclusion. On this point, the theme of civil subjection recalls the discussion of Fonseca and Cardarello (1999, 83-121) on "rights of the more or less human" and the observation of Eilbaum and Medeiros (2015, 420-1) that police violence adheres to a scale that classifies the target of an action as more or less human.

Before concluding with two observations on the importance of ethical-moral rights in conflict management, I cannot fail to mention the recent episodes of "*carteiradas"*, or attempts to 'pull rank', widely disseminated by the media during the pandemic last year. Both cases involved the appeal to particular identities and statuses in order to obtain special enjoyment of rights in the civic world. In Santos, a judge presented himself as such in order to refuse the fine he had received from a municipal guard for failing to use a mask. The judge humiliated the guard and threatened to call the Public Security Secretary. The other case occurred in Rio de Janeiro: on being approached by an inspector, who asked them to obey the social distancing rules in the area of a bar, a couple became irritated. Hearing her husband addressed as 'citizen' by the inspector, the wife exclaimed: "He's not a citizen! A civil engineer, trained. Better than you…" The two cases simultaneously reinforce the resilience of the practices and demands of unequal treatment and the difficulties of institutionalizing the role and value of the ordinary citizen.

## IV) Conclusion

As in the cases of disrespect of ethical-moral rights in small claims in the United States and in the situations that motivate the demand for recognition in Quebec in relation to the rest of Canada, the practices of unequal treatment in Brazil also centre on the perception of an improper imposition of an abusive relationship,

14 Discursive exclusion does not always imply civil subjection. It entails a more comprehensive problem that marks the difficulty of the modern State in listening adequately to its citizens from their point of view. Movements like Podemos in Spain or Occupy Wall Street in the United States are good examples of this situation. The peculiarity of civil subjection in the Brazilian context is related to the fact that the excluded voice is conceived as not deserving to be heard (Cardoso de Oliveira 2020).



Anu. Antropol. (Brasília) v. 47, n. 3, pp.30-47. (setembro-dezembro/2022). Universidade de Brasília. ISSN 2357-738X. https://doi.org/10.4000/aa.10142

resulting in a moral insult. Along the same lines, while the three ethnographic situations involve objective infringements of rights, in the Brazilian case unequal treatment prevents the universalization of rights and incisively disrespects a series of formal, legally instituted rights, which do not encounter the same difficulties in the other two cases. As we saw in the Quebec case, the universalization of rights and citizen equality sometimes demands the relativization of uniform treatment.

It is worth emphasizing that the conception of equality that anticipates differentiated treatment, unequalling rights according to the citizen's status and social condition, giving precedence to the whole in relation to the individual, is marked by a certain artificialist holism or *pseudo-holism*, as Dumont would say[15], This conception evinces an idea of society that subordinates the interests and wishes of citizenship to the preservation of traditional relations with a hierarchic character, which no longer encounter the same backing in the existing social demands for greater institutionalization of citizen equality, even though there exists no clear idea about the best form of the civic world or about the demarcation of the boundary between rights and privileges. In fact, the traditional view persists in some ways but is unable to achieve hegemony in the contemporary world.

Finally, it is important to emphasize that, by contrast, the comparative enterprise undertaken here, combined with the concern to articulate the analysis of conflict management processes with questions concerning citizenship and unequal treatment is a characteristic of the Anthropology of Law produced in Brazil, well expressed in the production of my research group CAJU[16], and in the network of researchers making up InEAC[17]. In this sense, the dialogue with the researchers at different levels of training linked to CAJU and InEAC has been central to the enhancement of the ideas developed here, and is indeed much broader than I have been able to indicate in the citations made over the course of the article.

15 Dumont (1986, 158) speaks of pseudo-holism in his analysis of the limits of Nazi ideas in Hitler's Germany in attempting to subordinate the already enrooted individualism to the precedence of society as a totality.

16 Laboratory of Studies of Citizenship, Conflict Management and Justice – CAJU.

17 National Institute of Science and Technology of Comparative Studies in Conflict Management – INCT- InEAC.

## Acknowledgements

I wish to thank Roberto Kant de Lima, Daniel Schroeter Simião, Luiz Eduardo de Lacerda Abreu, Kelly Silva and Daniel Mendonça Lage da Cruz for their various comments and suggestions, noting that any limitations of the text are solely my own responsibility.

Recebido em 27/10/2022
Aprovado para publicação em 01/11/2022 pela editora Kelly Silva

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